

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

FILED BY *lg* D.C.
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THOMAS M. GOULD
CLERK, U.S. DISTRICT COURT
W/D OF TN, MEMPHIS

JEH, INC., and ERIC HINSHAW)

Plaintiffs,)

vs.)

No. 05-2509 Ma/V

VOLVO CONSTRUCTION EQUIPMENT,)

RENTS, INC.; VOLVO CONSTRUCTION)

EQUIPMENT NORTH AMERICA, INC.;)

VOLVO COMMERCIAL FINANCE LLC)

THE AMERICAS; and SCOTT)

CONSTRUCTION EQUIPMENT CO.,)

LLC,)

Defendants.)

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL DEPOSITIONS AS MOOT

Before the court is the July 25, 2005 motion of the plaintiffs, JEH, Inc., and Eric Hinshaw, to compel the depositions of Steve Smith and Chris Kellet. The motion has been referred to the United States Magistrate Judge for determination. For the following reasons, the motion is denied as moot.

This action arises from an alleged breach of franchise agreement between the plaintiffs and the defendants, Volvo Construction Equipment Rents, Inc. ("Volvo Rents"). On July 1, 2005, the plaintiffs' filed suit for rescission, damages, and declaratory judgment in the Chancery Court of Shelby County, Tennessee. On July 5, 2005, Volvo Commercial Finance LLC of The

Americas ("Volvo Finance") issued to the plaintiffs a notice of default on a debt that the plaintiffs had allegedly incurred under the franchise agreement.

The plaintiffs requested a temporary restraining order against all defendants claiming that the notice of default was filed in retaliation for the plaintiffs filing suit. The request for the restraining order was granted on July 6, 2005 by Judge James Russell.

On July 15, 2005, the defendants removed the case to the United States District Court. On July 20, 2005, the plaintiffs requested that the restraining order granted in state court be extended by the District Court. Pursuant to 28 U.S.C. § 1450, Judge Samuel H. Mays held that the restraining order would remain in full force and effect until a hearing could be held on the plaintiffs' request for a preliminary injunction. A hearing was set before Judge Mays for July 27, 2005 to determine the status of the temporary restraining order and to hear arguments on the plaintiffs' request for a preliminary injunction.

On July 25, 2005, the plaintiffs filed a motion for a short continuance on the temporary injunction hearing and a motion to compel the depositions of Steve Smith and Chris Kellet, employees of Volvo Rents. At the July 27, 2005 hearing the plaintiffs again requested a delay in the Judge's decision pending the deposition of

Steve Smith and Chris Kellet. This request was denied. After hearing arguments from counsel and testimony of witnesses, including Steve Smith, the court denied the request to continue the temporary restraining and for a preliminary injunction.

The court has this day entered a scheduling order which provides that the matters at issue between the plaintiffs and Volvo Rents be stayed while the plaintiffs and Volvo Rents engage in the mediation. Accordingly, the plaintiffs' motion to compel the depositions of Chris Killet and Steve Smith is moot and is denied as such.

IT IS SO ORDERED this 22nd day of August, 2005.



DIANE K. VESCOVO
UNITED STATES MAGISTRATE JUDGE



Notice of Distribution

This notice confirms a copy of the document docketed as number 42 in case 2:05-CV-02509 was distributed by fax, mail, or direct printing on August 25, 2005 to the parties listed.

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Honorable Samuel Mays
US DISTRICT COURT